Woods Hole, Martha's Vineyard
and Nantucket Steamship Authority

PROCUREMENT POLICY

As Revised through January 21, 2025

Our mission is to operate a safe, efficient, and reliable transportation system for the islands of Martha's Vineyard and Nantucket with a commitment to sustainability, accessibility, our port communities, and public engagement.

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PROCUREMENT POLICY

The provisions of this Policy shall apply to every contract for the procurement of supplies, services, construction work (whether for repairs or original construction), equipment, materials or real property and for the disposal of equipment, materials, supplies or real property by the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (hereinafter referred to as the "Authority").

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The Authority will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the Authority have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

CHAPTER I: GENERAL PROVISIONS

PART A. CHIEF PROCUREMENT OFFICER.

Section 1. Appointment and Responsibilities.

The General Manager shall appoint one person to serve as Chief Procurement Officer of the Authority. Subject to the provisions of this Policy, the Chief Procurement Officer shall be responsible for all procurements for the Authority and for all disposals of equipment, materials, supplies and real property no longer useful to the Authority. The Chief Procurement Officer also shall have the responsibility for implementation and enforcement of this Policy and for maintaining a uniform set of procedures and forms to supplement the provisions of this Policy (hereinafter referred to as the "Supplemental Procedures").

Section 2. Delegation of Powers and Duties.

With the approval of the General Manager, the Chief Procurement Officer may delegate his or her powers and duties in accordance with this Section to one or more employees of the Authority. The Chief Procurement Officer must make this delegation in writing, stating the activity or function authorized and the duration of the delegation. A delegation may be in specific or general terms, may be limited to a particular procurement or class of procurements, and may be conditioned upon compliance with specified procedures. The written delegation must be signed by the Chief Procurement Officer. Any delegation may be revoked or amended in writing by the Chief Procurement Officer whenever the Chief Procurement Officer determines that revocation or amendment is in the best interests of the Authority. The Chief Procurement Officer and all persons to whom procurement activities are delegated pursuant to this Section are hereinafter referred to as "procurement officer(s)."

PART B. VALIDITY, CERTIFICATION AND WRITING REQUIREMENTS.

Section 1. Compliance with this Policy Required for Validity of a Procurement Contract.

No payment may be made by or on behalf of the Authority for any procurement service, and no disposal may be made by the Authority, until the procurement officer responsible for such procurement or disposal has certified that the contract for such procurement or disposal has been awarded in accordance with the provisions of this Policy. Unless otherwise required by law, a contract made in violation of this Policy shall not be valid and the Authority shall make no payment under such contract; provided, however, that minor informalities shall not require invalidation of a contract.

Furthermore, the Authority shall not enter into any contract with any contractor included on any state or federal debarment list. Individual departments and/or the procurement officer must perform a reasonable investigation into whether a contractor is debarred, suspended or otherwise excluded from receiving a contract award. Information concerning vendor debarment can be viewed at www.mass.gov/service-details/vendor-debarment.

Section 2. Certifications.

No contract or other agreement for goods or services of any type shall be awarded to any person unless the person has provided the Authority with a written certification, under penalties of perjury, as follows:

(a) pursuant to Mass. G.L. c. 7, §22C, that the contractor does not employ ten or more employees in an office or other facility located in Northern Ireland or, if it does so employ

ten or more employees there, that (a) it does not discriminate in employment, compensation or the terms, conditions and privileges of employment on account of religious or political beliefs; and (b) it promotes religious tolerance within the work place and the eradication of any manifestations of religious and other illegal discrimination.

(b) pursuant to St. 1990, c. 521, §7, as amended by St. 1991, c. 329, that the contractor does not have fifty or more employees or, if it does employ fifty or more employees, it has established a dependent care assistance program or a cafeteria plan whose benefits include a dependent care assistance program or it offers child care tuition assistance or on-site or near-site subsidized child care placements;

(c) pursuant to G.L. c. 151A, § 19A(b), that the contractor has complied with all laws of the Commonwealth of Massachusetts relating to contributions to the Massachusetts Unemployment Fund and payments in lieu of such contributions; and

(d) pursuant to G.L. c. 62C, §49A, that the contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

In addition, the Authority shall not enter into any contract or other agreement in excess of $5,000 with any employer for any goods or services unless the employer has submitted a certificate of compliance issued by the Department of Unemployment Assistance showing that it is current in all its obligations relating to contributions, payments in lieu of contributions and the employer medical assistance contribution established in Mass. G.L. c. 149, § 189.

Section 3. Contracts over $10,000 to be in Writing.

All contracts in the amount of $10,000 or more shall be in writing (which, for contracts under $50,000, may be in the form of the procurement officer's request for quotations, the vendor's quotation in response thereto, and the purchase requisition), and the Authority shall make no payment for a procurement costing $10,000 or more prior to the execution of such contract.

Section 4. Splitting of Procurements.

No person shall cause or conspire to cause the splitting or division of any procurement, specification, invitation for bids, request for proposals, request for responses, bid, proposal, solicitation or quotation for the purpose of evading a requirement of this Policy or any applicable statute. Nor shall any person cause or conspire to cause the enlargement of any contract period for the purpose of evading a requirement of this Policy or any applicable statute.

Section 5. Contract Cost and Price Analysis.

When using federal funds individual departments must perform a cost or price analysis in connection with every procurement action in excess of $250,000 or the "Simplified Acquisition Threshold" under 2 C.F.R. § 200.324(a), including any contract modifications. A cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used per 2 C.F.R. § 200.324(d).

PART C. PROCUREMENT CONTRACT RECORDS AND REPORTING REQUIREMENTS.

Section 1. Retention of Contract Records.

A procurement officer who has responsibility for a procurement in the amount of $10,000 or more shall maintain a file on each such procurement and shall include in such file a copy of all written documents required by this Policy. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request. Such files shall be retained by the Authority for at least six (6) years from the date of final payment under the contract. Except as otherwise provided by law or a provision of this Policy, the records shall be open to public inspection.

Section 2. Reporting Requirements.

(a) The General Manager shall submit a report to the Members and Port Council on at least a monthly basis identifying all contracts in the amount of $25,000 or more (whether actual or estimated) that have been awarded under this Policy since the date of his or her last report. The report shall contain the following information with respect to each such contract:

(1) the person to whom the contract was awarded;

(2) the purpose of the contract;

(3) the amount of the contract;

(4) the amount previously budgeted for the contract;

(5) the number and amounts of all other bids or proposals for the contract;

(6) the procedures set forth in this Policy pursuant to which the contract was awarded (e.g., invitation for bids, request for proposals, request for responses, professional services, sole source, emergency procurement), with the reasons why such procedures were followed; and

(7) in the event the contract was not awarded to a lower bidder or proponent on the grounds that such bidder or proponent was not eligible or responsible, the reasons for rejecting that lower bidder or proponent.

(b) The General Manager also shall submit a report to the Members and Port Council on at least a monthly basis identifying all contracts whose amounts (whether actual or estimated) have increased by $25,000 or more since the date of his or her last report. The report shall contain the following information with respect to each such contract:

(1) the person to whom the contract was awarded;

(2) the purpose of the contract;

(3) the original amount of the contract;

(4) the increased amount of the contract; and

(5) the reasons for the increase in the amount of the contract.

(c) The Treasurer/Comptroller also shall require the Authority's auditors to review the Authority's compliance with the procedures governing the award of all contracts in the amount of $25,000 or more every three months.

PART D. NONDISCRIMINATION AND PREFERENCES.

Section 1. Nondiscrimination.

The Authority shall take non-discriminatory action with respect to all procurements and disposals to ensure equal opportunity of the benefits of doing business with the Authority. The Chief Procurement Officer shall undertake suitable and practical measures to ensure that minority and women-owned business entities are informed of opportunities to contract with the Authority. If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

Section 2. Preferences.

To the extent permitted by law, the Authority shall establish preferences when identical bids or proposals are received for the procurement of the following supplies and services:

(a) products or services by businesses with their principal place of business in the Commonwealth of Massachusetts, in accordance with Mass. G.L. c. 7, §22O;

(b) products and commodities that contain recycled materials when they are available at an appropriate price and quality, in accordance with Executive Order # 279; and

(c) brooms, mops and other supplies for sale by the Commission of the Blind, in accordance with Mass. G.L. c. 6, §134; and

(d) products of agriculture, including but not limited to fruits, vegetables, eggs, dairy products, meats, crops, horticultural products or products processed into value added products as part of a Massachusetts farm operation, that are grown in the Commonwealth or products produced using products grown in the Commonwealth as well as fish, seafood and other aquatic products, in accordance with Mass. G.L. c. 7, §23B.

PART E. COMPLIANCE WITH FEDERAL LAW.

Where a procurement involves the expenditure of federal or state assistance or contract funds, the provisions of this Policy shall not apply to the extent that such provisions prevent compliance with mandatory provisions of federal or state law and regulations.

Section 1. Use of Federal Funds

(a) All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

(b) After receiving federal funding, individual departments must maintain oversight of the contract to ensure that the contractor is performing in accordance with the contract terms, conditions and specifications, which should require the contractor to provide a written progress schedule that is approved by the Authority and reviewed and updated weekly or as necessary until the project is completed to the Authority's satisfaction.

PART F. AMENDMENT AND DELEGATION BY THE MEMBERS.

Section 1. The Members' Power to Amend this Policy.

The Members may amend or waive any provision of this Policy at any time by a majority vote at a duly constituted meeting.

Section 2. Delegation of the Members' Responsibilities.

(a) To the extent that this Policy requires the Members to take any action or make any award of a contract, the Members may, by majority vote at a duly constituted meeting, delegate responsibility for such action or award in such manner as they deem appropriate through the exercise of sound business practices.

(b) The Members also hereby authorize the General Manager to award any contract in an amount less than $100,000 for which they would otherwise have responsibility under the provisions of this Policy, whether or not funds for such contract already have been provided for in the Authority's operating budget or capital budget, provided that the contract is otherwise awarded in accordance with the applicable procedures set forth in this Policy.

(c) The Members also hereby authorize the General Manager to approve any change order to any contract for which they would otherwise have responsibility under the provisions of this Policy, whether or not funds for such change order already have been provided for in the Authority's operating budget or capital budget, provided that:

(1) the contract that is the subject of the change order has been awarded in accordance with the applicable procedures set forth in this Policy;

(2) the amount of the change order is less than $200,000; and

(3) if the amount of the change order is $100,000 or greater, the General Manager also:

(a) certifies in writing that a delay in the authorization of the change order to allow the Members to consider at their next regularly scheduled meeting would adversely affect the progress of the work being performed under the contract, describing the circumstances surrounding the contract and the change order, and explaining the reasons why the delay in approving the change order would be detrimental to the Authority's operations;

(b) provides a copy of the certification to the Members prior to their next regularly scheduled meeting; and

(c) provides an oral report on the need for the change order at the Members' next scheduled meeting.

CHAPTER II: PROCUREMENTS

PART A. NON-CONSTRUCTION SUPPLIES AND SERVICES.

Section 1. Applicability.

(a) Every contract for the procurement of supplies or services, other than such contracts governed by the provisions of Parts B through E below, shall be awarded in accordance with the procedures set forth in this Part A and the Supplemental Procedures.

(b) Notwithstanding the provisions of paragraph (a) above, the provisions of this Part A shall not apply to the following contracts, which shall continue to be awarded by the Members through the exercise of sound business practices, by majority votes at duly constituted meetings:

(1) intergovernmental agreements, which shall include agreements with the federal government, the Commonwealth of Massachusetts and any municipality or political subdivision thereof, and any of their agencies, boards, commissions, authorities, departments and public instrumentalities;

(2) the issuance of bonds, notes or securities in accordance with procedures established by law;

(3) contracts and investments made in connection with deferred compensation programs for employees or employee individual retirement accounts;

(4) contracts for insurance or surety bonds;

(5) contracts for the services of expert witnesses for use in an adjudicatory proceeding or litigation or in anticipation thereof, labor relations representatives, physicians, dentists, health care providers, ambulances, lawyers, banks or certified public accountants, architects, engineers, or for other recognized professional services;

(6) agreements in connection with the provision or licensing of vessel transportation and dockage services;

(7) contracts to provide job-related training, educational, career development or assistance services for the Authority's employees;

(8) contracts for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials; or

(9) contracts which are funded by proceeds derived from a gift to the Authority or a trust established for the Authority's benefit.

(c) The Members hereby authorize the General Manager to award any or all of the above contracts pursuant and subject to Chapter I, Part F, Section 2 of this Policy.

(d) This Part A shall be deemed to have been complied with when pooled purchases are made under the provisions of Mass. G.L. c. 7, §§ 22A and 22B, or when such purchases are made from a vendor pursuant to a contract with the federal government (including purchases made from a vendor pursuant to a General Services Administration federal supply schedule that is available for use by governmental bodies), the Commonwealth of Massachusetts or any municipality or political subdivision thereof, or any of their agencies, boards, commissions, authorities, departments and public instrumentalities, for the item or items being purchased.

Section 2. <u>Procurements under $50,000 (Informal Quotes)</u>.

(a) A procurement in the amount of less than $10,000 shall be obtained by a procurement officer through the exercise of sound business practices, which shall include soliciting competitive quotations where practical or, if not practical, periodically soliciting price lists or quotes.

(b) Except as permitted pursuant to paragraph (c) below or in an emergency situation governed by Section 6, a procurement officer shall seek written or oral quotations for the procurement of a supply or service in the amount of $10,000 or greater, but less than $50,000, from no fewer than three persons customarily providing such supply or service. The procurement officer shall record the names and addresses of all persons from whom quotations were sought, the names of the persons submitting quotations and the date and amount of each quotation. The foregoing notwithstanding, the Chief Procurement Officer may require that certain procurements in amounts of less than $50,000 be based on written quotations or be subject to the provisions of Section 3 or Section 4. The procurement officer shall award the contract to the responsible person offering the needed quality of supply or service in a timely fashion at the lowest quotation.

(c) Notwithstanding the provisions of paragraph (b) above, upon prior approval by the General Manager, a procurement officer may obtain a supply or service in an amount of $10,000 or greater, but less than $50,000, without competition if the procurement officer, after reasonable investigation, certifies in writing that he or she is not aware of any other person within the locality where the supply or service is to be provided who is able to provide the desired quality of supply or service within the time required by the Authority.

(d) All procurements exceeding $5,000 must be approved by the General Manager before the contract is awarded.

Section 3. <u>Procurements of $50,000 or more (Invitations for Bids)</u>.

(a) Except as otherwise permitted under another provision of this Policy, the award of every procurement contract for a supply or service in the amount of $50,000 or more shall conform to the competitive sealed bidding procedures set forth in this Section.

(b) A procurement officer shall issue an invitation for bids for such a contract. The invitation shall include:

(1) the time and date for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the Authority;

(2) the purchase description and all evaluation requirements and criteria to be utilized in evaluating the bids, which shall include the standards by which the procurement officer will determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose;

(3) all contractual terms and conditions applicable to the procurement.

a. The invitation for bids may incorporate documents by reference; provided, however, that the invitation specifies where prospective bidders may obtain the documents. The procurement officer shall make copies of the invitation available to all persons on an equal basis.

(b) The procurement officer shall give public notice of the invitation for bids a reasonable time prior to the date for the opening of bids. The notice shall:

(1) indicate where, when and for how long invitations for bids may be obtained;

(2) describe the supply or service desired, and reserve the right of the Authority to reject any or all bids;

(3) remain posted, for at least two weeks, on the Authority's website and in a conspicuous place in or near the offices of the Authority until the time specified in the invitation for bids; and

(4) be published in the Secretary of State's Goods and Services Bulletin at least ten calendar days before the time specified for the opening of bids and also published in at least one newspaper circulating in each of the towns of Falmouth, Nantucket and Barnstable, the city of New Bedford and the county of Dukes County, once a week for at least two consecutive weeks, the last publication to be at least one week before the time specified for the opening of bids.

The procurement officer may distribute copies of the notice to prospective bidders, and may compile and maintain lists of prospective bidders to whom notices may be sent.

(d) The procurement officer shall open bids publicly in the presence of one or more witnesses, and the procurement officer and said witnesses shall sign a certification listing the names of all bidders and the amounts of their bids and declaring that said list is a complete and accurate list of bids opened in the presence of said witnesses. Such certification shall be filed with the contract.

(e) The procurement officer shall unconditionally accept a bid without alteration or correction, except as provided in this paragraph. A bidder may correct, modify or withdraw a bid by written notice received in the office designated in the invitation for bids prior to the time and date set for the bid opening. After the bid opening, a bidder may not change the price or any other provision of the bid in a manner prejudicial to the interests of the Authority or fair competition. The procurement officer shall waive minor informalities or allow the bidder to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the procurement officer shall correct the mistake to reflect the intended correct bid and so notify the bidder in writing, and the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident.

(f) The procurement officer shall evaluate the bids based solely on the requirements and criteria set forth in the invitation for bids under paragraph (b) (2). The procurement officer also shall conduct such investigation as he or she deems necessary and appropriate to verify the information submitted and confirm whether the lowest eligible bidder is responsible within the meaning of Section 7 hereof. The procurement officer shall then transmit his or her evaluations of the bids to the General Manager and also shall make available to the General Manager all materials made or received relating to his or her evaluations.

(g) Unless the Members have delegated their responsibility to award a particular contract to the General Manager, the Members shall award the contract to the lowest responsible and eligible bidder, as defined in Section 7 hereof, by a majority vote at a duly constituted public meeting, except that a contract requiring payment to the Authority of a net monetary amount shall be awarded to the highest responsible and eligible bidder. Otherwise, the General Manager shall award the contract to the lowest responsible and eligible bidder or, if the contract requires payment to the Authority of a net monetary amount, to the highest responsible and eligible bidder. The procurement officer shall deliver a written notice of the award to the selected bidder within the time for acceptance specified in the invitation for bids and execute the contract on behalf of the Authority. The parties may extend the time for acceptance by mutual agreement.

Section 4A. Additional Evaluation Criteria for Certain Contracts (Requests for Proposals (RFPs)).

(a) In the event the Chief Procurement Officer determines that selection of the most advantageous offer for a contract requires comparative judgments of factors in addition to price, he or she shall so state in writing, specifying the reasons for the determination, and shall follow the procedures set forth in this Section 4A.

(b) The Chief Procurement Officer shall solicit proposals through a request for proposals. The request for proposals shall include:

(1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, the maximum time for proposal acceptance by the Authority;

(2) the purchase description and all evaluation criteria other than price that will be utilized in evaluating the proposals, which criteria shall include all standards by which acceptability will be determined as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose, and shall also include all other performance measures that will be utilized; and

(3) all contractual terms and conditions applicable to the procurement, provided that the contract may incorporate by reference a plan submitted by a selected proponent for providing the required supplies or services.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective proponents may obtain the documents. The request for proposals shall provide for the separate submission of price and shall indicate when and how the proponents shall submit the price so as to avoid its disclosure until after evaluation of the proposal on the basis of criteria other than price. The Chief Procurement Officer shall make copies of the request for proposals available to all people on an equal basis.

(c) Public notice of the request for proposals shall conform to the procedures set forth in paragraph (c) of Section 3.

(d) The Chief Procurement Officer shall not open the proposals publicly but shall open the proposals in the presence of one or more witnesses at the time specified in the request for proposals. At the opening of proposals, the Chief Procurement Officer shall prepare a register of proposals which shall include the name of each proponent and the number of modifications, if any, received. The register of proposals shall be open for public inspection. In addition, the Chief Procurement Officer shall not open the price proposals at that time; instead, the price proposals shall remain sealed until after the proponents' proposals are evaluated on the basis of criteria other than price. Notwithstanding the provisions of Chapter I, Part C, Section 1 (retention of contract records), the contents of the proposals shall remain confidential and shall not be disclosed to competing proponents

or the public until the time provided for in paragraph (h) below or such time as the request for proposals is canceled in accordance with Section 8.

(e) A proposal may be corrected, modified or withdrawn to the extent provided in paragraph (e) of Section 3.

(f) The Chief Procurement Officer shall designate the individual or individuals responsible for the evaluation of the proposals on the basis of criteria other than price. The designated individuals shall prepare their evaluations based solely on the criteria set forth in the request for proposals under paragraph (b)(2). In the course of evaluating the proposals, the designated individuals may, but are not required to, request any proponent or proponents to make presentations explaining their proposals, the contents of which will be considered in the evaluation process. However, the presentations may not change or add to the provisions of such proposals or otherwise affect such proposals in a manner prejudicial to fair competition. The evaluations shall specify in writing:

(1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous or unacceptable, and the reasons for the rating;

(2) a composite rating for each proposal, and the reasons for the rating; and

(3) revisions, if any, to each proposed plan for providing the required supplies or services which should be obtained by negotiation prior to awarding the contract to the proponent of the proposal.

(g) After the preparation of the aforesaid evaluations, the Chief Procurement Officer shall not open the price proposals publicly, but shall open the price proposals in the presence of one or more witnesses, who may be the aforesaid designated individuals. At the opening of the price proposals, the Chief Procurement Officer shall prepare a register of such price proposals which shall include the name of each proponent and the number of modifications, if any, received. The register of price proposals shall be open for public inspection.

(h) After the opening of the price proposals, the Chief Procurement Officer shall, with the advice and assistance of those aforesaid individuals, select up to three finalists from among the responsible and eligible proponents, taking into consideration price and the evaluations of the proposals specified in writing by the individuals. The Chief Procurement Officer also shall rank the finalists in his or her recommended order of qualification and prepare a written statement explaining the reasons for his or her choice and ranking of the finalists. The Chief Procurement Officer shall then transmit a list of the chosen finalists to the Members, together with his or her ranking of the finalists in the recommended order of qualification and his or her written statement explaining the reasons for the choice of such finalists and their ranking. The Chief Procurement Officer shall also make available to the Members all materials made or received relating to his or her recommendations. The aforesaid list, recommendations, materials and the proposals themselves shall be open for public inspection during regular office hours no later than three (3) business days after the Chief Procurement Officer transmits the list to the Members.

(i) The Members shall be responsible for awarding the contract and, in this regard, shall not be bound by any recommendations or evaluations of either the Chief Procurement Officer or any of the aforesaid designated individuals. The Members may, but are not required to, request any proponent or proponents to make presentations explaining their proposals, the contents of which may be considered by the Members, provided that such presentations do not change or add to the provisions of such proposals or otherwise affect such proposals in a manner prejudicial to fair competition.

(j) The Members shall award the contract by a majority vote at a duly constituted public meeting and may condition an award on successful negotiation of the revisions specified in the evaluations or suggested by the Members themselves. If the selected proponent declines to enter into such a contract with the Authority, the Members may then award the contract to another proponent, subject to such conditions specified in the evaluations or suggested by the Members. The Chief Procurement Officer shall deliver written notice of the award to the selected proponent within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement.

Section 4B. Additional Evaluation Criteria for Commodities or Services Contracts (Requests for Responses (RFRs)).

(a) In the event the Chief Procurement Officer determines that selection of a best value response for a contract for commodities or services requires comparative judgments of factors in addition to price, he or she shall state in writing, specifying the reasons for the determination, and shall follow the procedures set forth in this Section 4B.

(b) Commodities are any article of trade, goods, products, supplies or information technology resources, including automated data processing and telecommunications hardware, software and systems. Services means the furnishing of time, labor, effort or specialized skills by a Contractor. Services shall include operational, professional, maintenance and repair, non-professional or other consultants.

(c) Consistent with 801 CMR 21.00, a Request for Response (RFR) shall be the mechanism used to communicate procurement specifications for commodities or services and to request Responses or interest from potential Bidders. An RFR may also be referred to as a “solicitation". RFR shall be used to solicit and select Responses from qualified Bidders under a competitive Procurement. The goal of all RFRs shall be to obtain the Best Value of commodities or services, or both, for the Authority. An RFR may include attributes of any of the methods of competitive procurement including; requests for proposals, request for qualifications or quotes, invitation for bids or good business practices.

(d) The Procurement Department shall draft an RFR which it deems appropriate, efficient and cost effective for the type of Procurement required. The RFR may include total Contract value thresholds, minimum Procurement requirements and legal or regulatory

restrictions, including limitations on the purchasing of certain types of restricted Commodities or Services or from certain restricted Bidders, and requirements and allowable preferences for purchasing of certain types of Commodities and Services.

(e) An RFR shall include the Acquisition Method to be used; whether single or multiple Contractors are sought; the anticipated duration of the Contract including anticipated renewal options; the available funding or anticipated compensation for the Contract, if relevant; detailed specifications or the anticipated goals or outcomes to be accomplished by the Procurement; instructions for submission of Responses; and a deadline date for submission of Responses.

(f) RFRs may be used to establish criteria which prospective Bidders must satisfy in order to be placed on a list of qualified Contractors. These criteria may include, but are not limited to, technical expertise, experience, quality of performance, location, availability of Commodities and Services, rates, prices, catalogs of Commodities or Services, or both, or other criteria relevant to a particular Procurement.

(g) Any Response to an RFR submitted by a Bidder shall be considered a firm offer and shall remain effective unconditionally for a minimum of 90 days unless a longer period is specified in an RFR, or unless extended by the Department upon prior notice to Bidders.

(h) The Procurement Department shall be responsible for identifying Bidders capable and willing to provide the Authority with the Best Value of Commodities or Services, or both. The Procurement Department shall identify potential Bidders through public notice, newspaper or electronic advertisements or other methods, or as required by law.

(i) Amendments. The Procurement Department may, at any time prior to the execution of a Contract, and without penalty, amend a Procurement or change the Procurement requirements, scope, budget or Procurement schedule upon notice to Bidders.

(j) Procurement Cancellation. The Procurement Department may for any reason, and at any time prior to the execution of a Contract, and without penalty, notify Bidders of a cancellation of a Procurement and the rejection of all Responses.

(k) Corrections or Clarifications to a Submitted Response. The Procurement Department shall determine whether to allow a correction of minor informalities in a Response. Minor informalities are matters of form rather than substance and include clerical errors or minimal or insignificant mistakes that can be corrected without prejudice to other Bidders. The Procurement Department may, upon written request of a Bidder, allow a correction of a minor informality in a Response which is clearly evident, such as a typographical error, transposition error or arithmetical error where the correct answer is obvious, or if the mistake is discovered by the Procurement Department, the Procurement Department may note the correction on the Response. If a Procurement Department requires clarification of any particular section of a Response, the Department must provide all Bidders that submitted Responses with the same notice and opportunity for clarification of the identified section in the Response.

Clarifications are explanations of what is stated in a Response and may not be used as an opportunity to submit supplemental information or a change to a Response, unless the Department specifically requests these submissions or changes as part of the clarification of all Responses. No correction or clarification of Response prices, terms and conditions or the submission of supplemental information prejudicial to the interests of other Bidders or to fair competition shall be permitted.

(l) References. The Procurement Department shall have the right to request references at any time during the Procurement process and at any time during the period of Contract performance. The Procurement Department may verify any references included in a Bidder' s Response and conduct any other reference or credit checks as the Procuring Department deems appropriate. The Procurement Department may consider any written references, including documentation of performance records of a Bidder on file at the Procurement Department or solicited from any other Department or entity, documentation of reference checks or other documentation solicited by or submitted to the Procurement Department during the Procurement process.

(m) Disqualification. The Procurement Department shall disqualify any Response that the Department determines to be unresponsive, including, but not limited to:

a. Responses which are received after the deadline for submission specified in an RFR.

b. Responses that fail to meet, address or comply with material requirements in an RFR, including instructions for submission, content or format.

c. Responses which indicate collusion or unfair trade practices by one or more Bidders agreeing to act in a manner intended to avoid or frustrate any of the provisions of this section 4B or any other law or regulation.

d. Responses submitted by a Bidder, or which identify a subcontractor, currently subject to any State or federal debarment order or determination. If the identified subcontractor is replaceable without a material effect on the Bidder's Response, the Bidder may be given the opportunity to select another subcontractor prior to execution of the Contract.

(n) Best and Final Offer, Evaluation of Responses and Selection of Bidder(s). The following options shall be available to a Department even if these options have not been included as part of an RFR:

a. Best and Final Offer. At any time after submission of Responses and prior to the final selection of Bidders for Contract negotiation or execution, the Procurement Department shall have the option to provide Bidders with an opportunity to provide a Best and Final Offer and may limit the number of Bidders selected for this option.

b. Evaluation of Responses and Selection of Bidder(s). The Procurement Department shall have the authority to evaluate Reponses and select a

Bidder(s) that it determines has offered the Best Value Response to the goals and performance requirements outlined in the RFR.

(o) Notification of Selected Bidders. The Procurement Department shall determine the timing and method of notifying Bidders of the Bidder(s) selected for Contract negotiation or the Contractor(s) that has executed a Contract. Notice may be limited to those Bidders who submitted Responses to an RFR.

(p) Contract and Contract Amendment Negotiation. The Procurement Department may negotiate with Selected Bidder(s) prior to execution of a Contract, and with Contractors after a Contract has been executed, as follows:

a. The language of the RFR shall determine what elements of Contract performance or cost, within the scope of the original RFR and a Bidder's or Contractor's Response, may be negotiated. If the RFR is silent as to what can be negotiated, the Procurement Department and a Selected Bidder or Contractor may negotiate only the details of performance identified within the scope of the original RFR and the Bidder's or Contractor's Response and may not increase or change the scope of performance or costs.

b. The Procurement Department and a Selected Bidder or Contractor may negotiate additional language which clarifies their understanding of, but does not change, the language of the Contract or Contract performance identified within the scope of the original RFR and the Bidder's or Contractor's Response.

c. Notwithstanding paragraph (a) within this Section P, the Procurement Department and a Selected Bidder or Contractor may negotiate a change in any element of Contract performance or cost, identified in the original RFR or the Bidder's or Contractor's Response, which results in lower costs or in a more cost effective or better value than was presented in the Bidder's or Contractor's originally selected Best Value Response.

(q) The identification of a Selected Bidder(s) shall create no contractual obligation on the Procurement Department or the Authority. Performance may not begin, until a Contract is properly executed. The execution of a Contract is conditioned upon the Procurement Department's acceptance of a Selected Bidder' s Response excluding any clauses or sections that are stricken by the Department as unacceptable and including any additional negotiated language as authorized under Section P, above.

(r) A Selected Bidder's Response shall be disqualified if the Procurement Department determines that the Bidder:

a. is intentionally or unreasonably delaying the timely execution of a Contract or is unable to execute timely even for reasonable delays;

b. conditions execution of a Contract Form upon the Procurement Department's acceptance of additional material or amended Contract terms

and conditions, or specifies that the Bidder's Response is "non-negotiable", "all- or- nothing" or that there can be "no substitutions";

c. negotiates in bad faith;

d. refuses to execute a Contract; or

e. is unable to reach a final agreement on contractual terms with the Department within a reasonable time as determined by the Department.

(s) If a Selected Bidder's Response is disqualified, for any reason, the Procurement Department may negotiate a Contract with the next Best Value qualified Bidder(s).

(t) Contract Effective Start Date. Notwithstanding verbal representations by the parties, or an earlier start date listed in the Contract, the effective start date of a Contract shall be the latest of the following dates:

a. the date the Contract has been executed by an Authorized Signatory of the Contractor;

b. the date the Contract has been executed by an Authorized Signatory of the Procurement Department; or

c. a later date specified in the Contract.

(u) A Contractor shall only be compensated for performance delivered to and accepted by the Procurement Department in accordance with the specific terms and conditions of a properly executed Contract.

(v) Emergency and Exceptional Circumstances. Notwithstanding any provisions to contrary herein, compensation for performance commenced prior to the contract effective start date shall be allowable in unanticipated, rare emergency or exceptional circumstances for the period from the date of the occurrence of such circumstance until a Contract is executed, which shall be documented by the Procurement Department as part of its Procurement File in accordance with policies and procedures set forth herein.

(w) Any and all payments cannot be issued until a properly executed Contract, with all requisite approvals, has been filed as prescribed by the Procurement Department and the Chief Procurement Officer.

(x) If any provision set forth herein is deemed, declared or found to be illegal, unenforceable or void, then the Procurement Department, the Chief Procurement Officer, Bidders and Contractors shall be relieved of all obligations under that provision only, and all other provisions shall remain in full force and effect.

Section 5. Sole Source Procurements.

(a) Unless no other manner of description suffices, and the procurement officer so determines in writing, setting forth the basis for the determination, all specifications shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service, or a procurement from a sole source. The procurement officer shall procure a proprietary item by competition if more than one potential bidder or proponent for that item exists.

(b) Upon the written approval of both the General Manager and the Chief Procurement Officer, a procurement officer may award a contract for a supply or service in an amount greater than $50,000 without competition when, after reasonable investigation, the procurement officer determines in writing that only one source for the required supply or service exists. Note, federal or state agencies awarding funding may authorize noncompetitive proposals provided the Authority submits a written request for approval to the awarding agency after unsuccessfully soliciting bids from a number of vendors and competition is deemed inadequate.

(c) The procurement officer shall record all sole source procurements, specifying each contractor's name, the amount and type of each contract, and the basis of the determination that the contractor was the only source for the required supply or service.

(d) A procurement officer may procure without competition water, electricity, gas, sewer or telephone services from a public utility company, if the procurement officer certifies in writing that only one practicable source exists.

Section 6. Emergency Procurements.

(a) Whenever a procurement officer cannot comply with a requirement of this Part A because of a special emergency involving the health, convenience or safety of the people using the facilities of the Authority, he or she may make an emergency procurement without following that requirement. Such emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this Part A to the extent practicable under the circumstances.

(b) The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor's name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for the emergency procurement. The procurement officer shall then submit copies of this record at the earliest possible time to the General Manager and Chief Procurement Officer.

Section 7. Eligible and Responsible Bidders and Proponents.

(a) "Eligible bidders and proponents" are those persons who have submitted a bid or a proposal which conforms in all respects to the invitation for bids or request for proposals. The Authority may still consider bidders and proponents to be eligible even though their bids or proposals contain minor informalities, which are minor deviations, insignificant mistakes or matters of form rather than the substance of a bid or proposal which can be waived or corrected without prejudice to other bidders or proponents, potential bidders or proponents, or the Authority.

(b) "Responsible bidders or proponents" are those persons who, in the procurement officer's judgment, have the capacity, experience, financial resources, equipment and other qualifications necessary to perform fully and properly the contract requirements and the integrity and reliability which assure good faith performance. In determining whether bidders or proponents are "responsible," the Authority will consider their prior similar experience, their past performance on public and private contracts, their financial stability, the qualifications of persons who will provide the service or supplies in question, and any other criteria that the procurement officer responsible for such procurement considers relevant for any contract.

(c) The procurement officer may conduct such investigation (including but not limited to examining the books, records and accounts of any bidder or proponent and conducting site visits of facilities) as he or she deems necessary and appropriate to verify the information submitted and ultimately to determine whether a particular bidder or proponent is in fact responsible and eligible to be awarded the contract.

(d) Without limiting the discretion of the procurement officer to determine whether a particular bidder or proponent is responsible and eligible to be awarded a contract, any of the following may be sufficient grounds for determining that a bidder or proponent is not "responsible" and for the removal or suspension of that bidder or proponent from the list of eligible bidders or proponents:

(1) Submission of materially false statements or information to the Authority;

(2) Withdrawal of bids or proposals due to careless submission;

(3) Delivery of supplies or services which do not comply with the Authority's specifications or other contractual requirements;

(4) Failure to make delivery within the time specified in the contract or order;

(5) Failure to provide a performance bond or payment bond or meet other criteria when required;

(6) Any substitutions of an article, even though of the same quality, without first securing the written authorization of the procurement officer; or

(7) Continued failure to submit properly prepared invoices for payment.

Section 8. Cancellation or Amendment of Invitations or Requests; Rejection of Bids, Proposals, or Responses.

(a) A procurement officer may cancel an invitation for bids, a request for proposals, a request for responses, or their solicitation, or may reject in whole or in part any and all bids or proposals when the procurement officer determines that cancellation or rejection serves the best interest of the Authority at any time prior to formally entering into a contract with a bidder or proponent; provided, however, that any such cancellation or rejection after an award of a contract by the Members shall be effected only by another vote of the Members taken at a duly constituted public meeting. The procurement officer shall state in writing the reason for a cancellation or rejection.

(b) A procurement officer may amend an invitation for bids, a request for proposals, a request for responses, or their solicitation at any time prior to the public opening of such bids or proposals; provided, however, that the procurement officer shall provide copies of such amendment to all persons who have requested copies of the invitation or request and shall afford all such prospective bidders and proponents sufficient time to modify their bids and proposals in light of the amendment.

Section 9. Bid, Proposal and Contract Certifications.

(a) The procurement officer shall require that every person submitting a bid, proposal, or response for the procurement of supplies or services to the Authority shall disclose in writing on the bid, proposal, or response the names and addresses of all persons interested in the bid, proposal or response, including all partners of the bidder or proponent if the bidder or proponent is a partnership and all officers, directors and all persons with an ownership interest of more than five percent (5%) if the bidder or proponent is a corporation.

(b) The procurement officer shall require that every person submitting a bid, proposal, or response for the provision of supplies or services to the Authority shall certify in writing on the bid, proposal, or response under penalties of perjury:

(1) that the bidder or proponent is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in connection with the contract; and

(2) that the bid, proposal, or response is in all respects bona fide, fair and made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, joint venture, partnership, corporation, union, or other business or legal entity or group

of individuals.

(c) In addition to the certifications required by Chapter I, Part B, Section 2 of this Policy, the procurement officer shall require that every contract for the provision of supplies or services, or the contractor's bid, proposal, or response therefor, contain a certification in writing by the contractor as follows:

(1) that the contractor has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract;

(2) that no person, corporation or other entity, other than a bona fide full time employee of the contractor, has been retained or hired by the contractor to solicit for or in any way assist the contractor in obtaining the contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the contractor;

(3) that no Member, employee, consultant or agent of the Authority shall be in the employ of, or be in any way, directly or indirectly, financially interested in any partnership, corporation or association having any financial transactions connected with the contract; and

(4) that the contractor did not assist in the development or drafting of specifications, requirements, statements of work, invitation for bids, requests for proposals or requests for responses when using federal funds.

Section 10. <u>Term of Contract</u>.

(a) Unless otherwise provided by law, the Authority may enter into a contract for any period of time which serves the best interest of the Authority; provided, however, that the procurement officer shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any.

(b) Unless authorized by the General Manager, a procurement officer shall not solicit or award any contract for a term exceeding three (3) years, including any renewal, extension or option. Such authorization may apply to a single contract or to any number of types of contracts, and may specify a uniform limit or different limits on the duration of any such contracts.

(c) In determining whether the procurement of a contract for a term of more than one year is subject to the provisions of Section 3 or Section 4, the procurement officer shall divide the estimated total amount of the contract by the number of years the contract will be in effect, so that the procurement of a contract for a term of more than one year shall be subject to the provisions of Section 3 or Section 4 only if the average annual amount paid by the Authority under the contract will be $50,000 or more.

(d) The invitation for bids, request for proposals, request for responses, or other solicitation for any contract for a term exceeding one year, including a renewal, extension or option, shall state, in addition to the other information required by this Part A, the following:

(1) the amount of supplies or services required for the proposed contract period, and whether such amount is the actual amount required or an estimate; and

(2) that the bidder or proponent shall give a unit price for each supply or service, and that the unit price shall remain the same throughout the contract, except to the extent that the solicitation and resulting contract provides for a price adjustment.

(e) When a contract is to contain an option for renewal, extension or purchase, the solicitation shall include notice of the provision. The Authority shall retain sole discretion in exercising the option, and no exercise of an option shall be subject to agreement or acceptance by the contractor.

(f) The Authority shall not exercise an option for renewal, extension or purchase unless the procurement officer, after reasonable investigation of costs and benefits, has determined in writing that the exercise of the option is more advantageous than alternate means of procuring comparable supplies or services.

Section 11. Increase of Services or Supplies Specified in a Contract.

(a) A procurement officer may increase the quantity of supplies or services or both specified in a contract provided:

(1) the unit prices, if any, provided for in the contract remain the same or less;

(2) the procurement officer has specified in writing that an increase is necessary to fulfill the actual needs of the Authority and is more economical and practical than awarding another contract;

(3) the parties agree to the increase in writing; and

(4) the increase does not result in an increase in the total amount (actual or estimated) of the contract by more than twenty-five percent (25%).

(b) Notwithstanding the provisions of subparagraph (a)(4) above, the General Manager may authorize a procurement office to approve a larger increase in the quantity of supplies or services or both specified in a contract if the procurement officer also certifies that the need for such an increase reasonably could not have been anticipated at the time the contract was awarded and that, as a practicable matter, the contractor is the only person who is now able to provide the required service or supply within the time required by the Authority.

Section 12. Decrease of Price for Supplies or Services Specified in a Contract.

The Authority, with the agreement of the contractor, may reduce the aggregate or unit price for supplies or services or both specified in a contract to be paid by the Authority at any time during the term of the contract or when an option to renew, extend or purchase is exercised.

PART B. VESSEL CONSTRUCTION CONTRACTS.

Section 1. Applicability.

Every contract for vessel construction work, or for the purchase of equipment, supplies or materials in connection with such work, whether for repairs or original construction, shall be awarded in accordance with the procedures set forth in Part A of this Chapter, except as set forth in Section 2 below.

Section 2. Vessel Construction Contracts of $50,000 or More.

If the estimated cost of any contract awarded under this Part B amounts to $50,000 or more:

(a) the following provisions of Part A of this Chapter shall not apply to the award of such contract:

(1) Section 4, entitled "Additional Evaluation Criteria for Certain Contracts (Requests for Proposals)";

(2) Section 5, entitled "Sole Source Procurements"; and

(3) Section 11, entitled "Increase of Services or Supplies Specified in a Contract," unless the original contract awarded contained provisions for such an increase of services or supplies; and

(b) the Authority shall publish the notice of the invitation for bids for the contract in the Central Register as required in Section 3(c)(4) of Part A of this Chapter instead of in the Secretary of State's Goods and Services Bulletin.

PART C. BUILDING AND PUBLIC WORKS CONSTRUCTION CONTRACTS.

Section 1. Applicability.

Every contract for the construction, reconstruction, alteration, remodeling, installation, demolition, maintenance or repair of any building or other public work by the Authority, or for the purchase of any materials in connection with any such work, shall be awarded in accordance with the procedures set forth in this Part C.

Section 2. Prevailing Wage Rates and Transportation Charges.

(a) Every contract subject to this Part C must require the contractor to pay prevailing rates of wages for all work performed on the project in accordance with the schedule of minimum wage rates issued for the project by the Division of Occupational Safety of the Massachusetts Department of Labor and Workforce Development, and give preferences for veterans and Massachusetts residents, pursuant to Mass. G.L. c. 149, §§26 and 27.

(1) Contracts requiring the payment of prevailing rates of wages include contracts for additions to and alterations of public buildings and public works; the installation of resilient flooring in, and the painting of, public buildings and public works; certain work done preliminary to the construction of public works, namely, soil explorations, test borings and demolition of structures incidental to site clearance and right of way clearance; and the demolition of any building or other structure ordered by the Authority for the preservation of public health or public safety. Mass. G.L. c. 149 §27D.

(2) Prior to awarding a contract for the construction of public works, the Authority must submit to the Department of Labor and Workforce Development a list of the jobs upon which mechanics and apprentices, teamsters, chauffeurs and laborers are to be employed, and request the Department to determine the rate of wages to be paid on each job. Mass. G.L. c. 149, §27.

(3) In advertising or calling for bids for said works, the Authority must incorporate said schedule in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of said schedule, without cost, to any person requesting the same. Said schedule shall be made a part of the contract for said works and shall continue to be the minimum rate or rates of wages for said employees during the life of the contract. Mass. G.L. c. 149, §27.

(b) Each such contract shall also contain stipulations requiring the contractor to pay any reserve police officer employed by him in any city or town the prevailing rate of wage paid to regular police officers in such city or town. Mass. G.L. c. 149, §34B.

(c) Contracts for the construction, repair, alteration or improvement of public ways, airports or similar public works must also meet the requirements of Mass. G.L. c. 30, §39A & §39B, regarding applicable rates and transportation charges, and additional security for the payment thereof, if it is contemplated that dump trucks will be hired from common or contract carriers for use in the prosecution of such contract or for the delivery of materials to be incorporated in such work.

Section 3. Workers' Compensation Insurance.

(a) Every contract subject to this Part C shall contain stipulations requiring that the contractor shall, before commencing performance of such contract, provide by insurance for the payment of compensation and the furnishing of other benefits under Mass. G.L. c. 152 or such other workers' compensation and employer's liability insurance as may be required by the law of any State in which work is being done to all persons to be employed under the contract, and that the contractor shall continue such insurance in full force and effect during the term of the contract.

(b) No contract subject to this Part C shall be awarded until the Authority has been furnished with sufficient proof of compliance with the stipulations required in paragraph (a) above. Mass. G.L. c. 149, §34A.

Section 4. Foreign (Out-of-State) Corporations.

The Authority shall not enter into a contract for the work with, and shall not approve as a subcontractor furnishing labor and materials for a part of the work, a foreign corporation which has not filed with the Authority a certificate of the State Secretary stating that the corporation has complied with requirements of section 15.03 of subdivision A of Part 15 of chapter 156D and the date of compliance, and further has filed all annual reports required by section 16.22 of subdivision B of Part 16 of said chapter 156D. The Authority shall report to the State Secretary and to the Department of Corporations and Taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the Commonwealth. Mass. G.L. c. 30, §39L.

Section 5. Other Required Contract Provisions.

(a) If the amount of any contract subject to this Part C is more than $2,000, it shall contain the provisions regarding bad-faith, fraudulent, capricious, arbitrary or erroneous decisions made under the contract not being final or conclusive, as set forth in Mass. G.L. c. 30, §39J.

(b) If the amount of any contract subject to this Part C is more than $10,000, it shall also:

(1) contain specifications that comply with the requirements of Mass. G.L. c. 30, §39M(b);

(2) contain provisions regarding the enforcement of claims by subcontractors against the general contractor under the contract, as set forth in Mass. G.L. c. 30, §39F;

(3) contain provisions regarding how a contractor is to certify that the work has been substantially completed and how the Authority is required to respond to such certification, as set forth in Mass. G.L. c. 30, §39G;

(4) contain provisions requiring the contractor to perform all the work required by such contract in conformity with the plans and specifications contained therein, except as provided in Mass. G.L. c. 30, §39I;

(5) contain the paragraph regarding equitable adjustments in the contract price of the contract affected by differing site conditions required by Mass. G.L. c. 30, §39N, in its entirety;

(6) contain the provisions regarding the Authority's right to suspend, delay or interrupt all or any part of the work for such period of time as the Authority may determine to be appropriate for its convenience required by Mass. G.L. c. 30, §39O, in their entirety;

(7) require that any decision or interpretation of the specifications, or any approval of equipment, material or progress of the work, by the Authority be made promptly, in accordance with Mass. G.L. c. 30, §39P;

(8) require the contract to make and keep books, records and accounts that are subject to examination as required by Mass. G.L. c. 30, §39R(b); and

(9) contain the certifications required by Section 9(c) of Part A of this Chapter.

(c) If a contract subject to this Part C is for an amount or estimated amount greater than $100,000, it shall also contain the provisions regarding changes in the methods of maintaining records or recording transactions, internal accounting controls, and audited financial statements required by Mass. G.L. c. 30, § 39R(b).

Section 6. <u>Payment Bonds</u>.

(a) If the amount of any contract subject to this Part C is more than $25,000, the Authority shall obtain security by bond in an amount not less than one half of the total contract price, for payment by the contractor and subcontractors for labor performed or furnished and materials used or employed therein. The specific requirements for this payment bond are set forth in Mass. G.L. c. 149, §29.

(b) Every payment bond must be the bond of a surety company organized pursuant to Mass. G.L. c. 175, §105, or of a surety company authorized to do business in the Commonwealth under the provisions of Mass. G.L. c. 175, §106, and be approved by the U.S. Department of Treasury and are acceptable as sureties and reinsurers on federal bonds under 31 USC §§9304-9308. Mass. G.L. c. 149, §29D.

Section 7. <u>Public Building Contracts</u>.

(a) Every contract or procurement for the construction, reconstruction, installation, demolition, maintenance or repair of a building by the Authority estimated to cost:

(1) less than $10,000, shall be obtained through the exercise of sound business practices, which shall include ensuring the receipt of favorable prices by periodically soliciting price lists or quotes; provided, however, that the Authority shall make and keep a record of each such procurement which shall, at a minimum, include the name and address of the person from whom the services were procured; and provided, further, that if the Authority utilizes a vendor on a statewide contract procured through the Operational Services Division of the Commonwealth, or a blanket contract procured by the Authority pursuant to this Section 7, the contract shall be deemed to have been obtain through sound business practices; or

(2) not less than $10,000 but not more than $50,000 shall be awarded to the responsible person offering to perform the contract at the lowest price. The Authority shall make public notification of the contract and shall seek written responses from no fewer than three persons who customarily perform such work, in accordance with the following requirements:

(i) The solicitation shall include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the Authority and the time period within which the work is to be completed.

(ii) The Authority shall record the names and addresses of all persons from whom written responses were sought, the names of the persons submitting written responses and the date and amount of each written response.

(iii) The Authority may utilize a vendor list established through a statewide contract procured through the Operational Services Division to identify one or more of the persons from whom it will seek written responses for purposes of this section. The Authority may also procure a blanket contract to establish a listing of vendors in certain defined categories of work that are under contract to provide services for multiple individual tasks of not more than $50,000 each, and from whom written responses will be sought; provided, however, that any such blanket contract procured by the Authority must be procured pursuant to either Mass. G.L. c. 30, §39M, or Mass. G.L. c. 149, §§44A to 44J, inclusive, which are applicable to projects over $50,000.

(iv) For purposes of this section, "public notification" shall include, but need not be limited to, posting at least two weeks before the time specified in the notification for the receipt of responses, the contract and scope-of-work statement:

- on the Authority's website,
- on the COMMBUYS system administered by the Operational Services Division of the Commonwealth,
- in the central register published pursuant to Mass. G.L. c. 9, §20A, and
- in a conspicuous place in or near the Authority's primary office;

provided, however, that if the Authority obtains a minimum of two written responses from a vendor list established through a blanket contract or a statewide contract procured through the Operational Services Division, and the lowest of those written responses is deemed acceptable to the Authority, public notification is not required.

(3) more than $50,000 but not more than $150,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of Mass. G.L. c. 30, § 39M, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read in accordance with the procedures set forth in Section 8 The term "pumping station" as used in this Section shall mean a building or other structure which houses solely pumps and appurtenant electrical and plumbing fixtures.

(4) more than $150,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of Mass. G.L. c. 30, §39M, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedures set forth in Mass. G.L. c. 149, §§44A-44H.

(b) If the amount of any contract subject to paragraph (a) above is more than $2,000, the contract shall contain statutorily prescribed provisions regarding periodic estimates and payments, retentions, and final payments, as set forth in Mass. G.L. c. 30, §39K.

Section 8. <u>Contracts for Other Construction and Construction Materials</u>.

(a) Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work not described in Section 7, or for the purchase of any material in connection with such work or public building construction work, and estimated to cost:

(1) less than $10,000 shall be obtained through the exercise of sound business practices, which shall include ensuring the receipt of favorable prices by periodically soliciting price lists or quotes; provided, however, that the Authority

shall make and keep a record of each such procurement which shall, at a minimum, include the name and address of the person from whom the services were procured; and provided, further, that if the Authority utilizes a vendor on a statewide contract procured through the Operational Services Division of the Commonwealth, or a blanket contract procured by the Authority pursuant to this Section 8, the contract shall be deemed to have been obtain through sound business practices; or

(2) not less than $10,000 but not more than $50,000 shall be awarded to the responsible bidder offering to perform the contract at the lowest price. The Authority shall make public notification of the contract and shall seek written responses from no fewer than three persons who customarily perform such work, in accordance with the following requirements:

(i) The solicitation shall include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the Authority and the time period within which the work is to be completed.

(ii) The Authority shall record the names and addresses of all persons from whom written responses were sought, the names of the persons submitting written responses and the date and amount of each written response.

(iii) The Authority may utilize a vendor list established through a statewide contract procured through the Operational Services Division to identify one or more of the persons from whom it will seek written responses for purposes of this section. The Authority may also procure a blanket contract to establish a listing of vendors in certain defined categories of work that are under contract to provide services for multiple individual tasks of not more than $50,000 each, and from whom written responses will be sought; provided, however, that any such blanket contract procured by the Authority must be procured pursuant to either Mass. G.L. c. 30, §39M, or Mass. G.L. c. 149, §§44A to 44J, inclusive, which are applicable to projects over $50,000.

(iv) For purposes of this section, "public notification" shall include, but need not be limited to, posting at least two weeks before the time specified in the notification for the receipt of responses, the contract and scope-of-work statement:

- on the Authority's website,
- on the COMMBUYS system administered by the Operational Services Division of the Commonwealth,
- in the central register published pursuant to Mass. G.L. c. 9, §20A, and
- in a conspicuous place in or near the Authority's primary office;

provided, however, that if the Authority obtains a minimum of two written responses from a vendor list established through a blanket contract or a statewide contract procured through the Operational Services Division, and

the lowest of those written responses is deemed acceptable to the Authority, public notification is not required.

(3) more than $50,000 shall be subject to the requirements of this Section 8 and shall be awarded to the lowest responsible and eligible bidder (*see* paragraph c below) on the basis of competitive bids publicly opened and reach forthwith upon expiration of the time for the filing thereof; provided, however, that the Authority may reject any and all bids, if it is in the public interest to do so.

The word "material" as used in this Section shall mean and include any article, assembly, system, or any component part thereof.

(b) Bids subject to this Section 8 must be in writing and shall be opened in public at the time and place specified in the posted or published notice, and after being so opened shall be open to public inspection. In addition:

(1) Every bid must be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the Authority. The amount of such bid deposit shall be five percent (5%) of the value of the bid. Every bid bond must be the bond of a surety company organized pursuant to Mass. G.L. c. 175, §105, or of a surety company authorized to do business in the Commonwealth under the provisions of Mass. G.L. c. 175, §106, and be approved by the U.S. Department of Treasury and are acceptable as sureties and reinsurers on federal bonds under 31 USC §§9304-9308.

(2) Any person submitting a bid must the following certifications on such bid, under the penalties of perjury:

(i) the certifications required by Section 9(b) of Part A of this Chapter;

(ii) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA) that is at least ten hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and

(iii) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA) that is at least ten hours in duration.

(c) The term "lowest responsible and eligible bidder" shall mean the bidder:

(1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work;

(2) who shall certify, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;

(3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA) that is at least ten hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee;

(4) who obtains within ten days of the notification of contract award the security by bond required under Mass. G.L. c. 149, §29; provided that for the purposes of this Section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Authority; provided further, that if there is more than one surety company, the surety companies shall be jointly and severally liable.

(d) In cases of extreme emergency caused by enemy attack, sabotage or other such hostile actions or resulting from an imminent security threat, explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, the Authority may, without competitive bids and notwithstanding any general or specific law, award contracts otherwise subject to this Section 8 to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work.

(e) The provisions of this Section shall not apply:

(1) to the extent that they prevent the approval of such specifications by any contributing federal agency;

(2) to materials purchased under specifications of the Massachusetts Department of Highways at prices established by the said department pursuant to advertisement and bidding in connection with work to be performed under the provisions of Mass. G.L. c. 81 or Mass. G.L. c. 90;

(3) to any transaction with the Commonwealth; and

(4) to any contract solely for the purchase of material procured through the Operational Services Division of the Commonwealth pursuant to Mass. G.L. c. 7, §§22 and 52.

Section 9. Advertising Requirements.

(a) No contract which is subject to the requirements of Section 7(a)(3), Section 7(a)(4) or Section 8 shall be awarded unless a notice inviting bids or proposals therefor has been:

(1) posted no less than one week prior to the time specified in such notice for the receipt of said bids or proposals on the Authority's website and in a conspicuous place in or near the Authority's offices, and shall have remained posted until the time so specified;

(2) published at least once not less than two weeks prior to the time so specified in the Central Register published by the Secretary of State pursuant to Mass. G.L. c. 9, §20A;

(3) published at least once not less than two weeks prior to the time so specified on the COMMBUYS system administered by the Operational Services Division of the Commonwealth; and

(4) published in at least one newspaper circulating in each of the towns of Falmouth, Nantucket and Barnstable, the city of New Bedford and the county of Dukes County, once a week for at least two consecutive weeks, the last publication to be at least one week before the time specified for the opening of bids.

Said notice shall also be published at such other times and in such other newspapers or trade periodicals as the Commissioner of Capital Asset Management and Maintenance may require, having regard to the locality of the work involved. Mass. G.L. c. 149, §44J(1).

(b) Said notice shall specify the time and place where plans and specifications of the proposed work may be had; the time and place of submission of general bids (and sub-bids, if applicable); and the time and place for opening of the general bids (and sub-bids, if applicable). Said notice shall also provide sufficient facts concerning the nature and scope of such project, the type and elements of construction, and such other information as will assist applicants in deciding to bid on such contact. Mass. G.L. c. 149, §44J(2).

(c) No request for proposals, request for responses, or invitation for bids shall be advertised if the Authority's cost estimate is greater than one year old. Mass. G.L. c. 149, §44J(9).

(d) These notice provisions may be waived in cases of extreme emergency involving the health and safety of the people and their property, upon the written approval of the Commissioner of Capital Asset Management and Maintenance. The written approval shall contain a description of the circumstances and the reasons for the Commissioner's determination. Mass. G.L. c. 149, §44J(6).

Section 10. Special Contracts.

Notwithstanding any other provisions of this Part C:

(a) the Authority may contract for the procurement of energy management services contracts in the manner provided by Mass. G.L. c. 25A, § 11C or, alternatively, in the manner provided by Mass. G.L. c. 25A, § 11I:

(b) the Authority may contract for energy conservation projects that have a total project cost of $100,000 or less in the manner provided by Mass. G.L. c. 25A, § 14;

(c) for solar photovoltaic projects with a total project cost that is less than $100,000, the Authority may acquire photovoltaic panels and associated equipment for onsite use of the energy generated by those panels in the manner provided by Mass. G.L. c. 25A, § 15;

(d) for any contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost not less than $5,000,000, the Authority may elect to use the construction management at risk delivery method in the manner provided by Mass. G.L. c. 149A, §§ 1 through 13; and

(e) for any contract for the construction, reconstruction, alteration, remodeling or repair of a public works project by the Authority and estimated to cost not less than $5,000,000, the Authority may utilize design build for the construction, reconstruction, alteration, remodeling or repair of the public works project in the manner provided by Mass. G.L. c. 149A, §§ 14 through 21.

PART D. CONTRACTS FOR DESIGN SERVICES.

Section 1. Design Services for Building Projects.

(a) The State Designer Selection Board shall have jurisdiction over the selection of all designers, programmers and construction managers performing design services in connection with any building project of the Authority whenever:

(1) the contract's design fee is $10,000 or more;

(2) the estimated construction cost of the project for which the design services are required is $100,000 or more;

(3) the contract is not for the fabrication or installation of modular buildings procured in accordance with Mass. G.L. c. 149, §44E; and

(4) the contract is not for the demolition of buildings;

(b) Notwithstanding the provisions of paragraph (a) above, the following types of projects, and contracts for design services for such projects, shall not be exempt from the Board's jurisdiction:

(1) contracts for continued or extended services on projects over which the Board otherwise has jurisdiction;

(2) projects otherwise subject to the jurisdiction of the Board for which the Authority intends to use its own staff to perform design services, unless the Board determines that the Authority has the capability with its existing staff to perform those services on the project in question, applying the same criteria as are used for selection of consultant designers.

(c) The State Designer Selection Board has appointed three designers to be eligible for multiple "house doctor" contracts for Authority building projects with estimated construction costs of less than $2,000,000 and lump sum design fees that do not exceed $500,000. Each such "house doctor" contract shall be awarded as follows:

(1) The general conditions for each "house doctor" contract shall be as set forth in the advertisement for the appointment of those "house doctors," DSB List # 11-08, DSB Public Notice Date of June 15, 2011, for the Authority's Contract No. 11-11, "Study and Design for Various Building and System Replacements." Pursuant to those general conditions, the "house doctor" selected for a particular project hereunder shall be required to execute the Authority's standard Contract for Final Design and Construction Administration Services ("Design Contract").

(2) Each "house doctor" contract shall be awarded through the exercise of sound business practices, which shall include soliciting competitive quotations from each of the three appointed "house doctors" where practical. The solicitation shall contain sufficient information for each "house doctor" to be able reasonably to propose a lump sum design fee for the contract, including but not limited to a complete description of the scope of services to be provided by the "house doctor" under the contract, with specific project requirements, that will then constitute the scope of services set forth in Attachment A to the Design Contract.

(d) Before entering into any contract for design services subject to the jurisdiction of the State Designer Selection Board for a building project that is estimated to cost not less than $1,500,000, the Authority shall contract for the services of an owner's project manager to serve as the Authority's agent and consultant during the planning, design and implementation of the building project in the manner provided by Mass. G.L. c. 149, §44A-1/2; provided, however, that the Authority may assign an existing employee to serve as the owner's project manager if that employee meets or exceeds the minimum qualifications as outlined in subsection (a) of Mass. G.L. c. 149, § 44A-1/2 and has experience in the construction and supervision of construction of buildings of similar size and scope of complexity as the project to which the employee is assigned.

Section 2. <u>Design Services for All Other Projects</u>.

Every contract for the provision of design services in connection with other public work or vessel projects of the Authority shall be awarded either in accordance with the procedures set forth in Part A of this Policy or by the Members through the exercise of sound business practices, by a majority vote at a duly constituted public meeting.

PART E. REAL PROPERTY.

Section 1. Determination to Acquire Real Property.

In the event the Authority decides to acquire real property, the Members shall formally determine, by a majority vote, to so act and shall specify the terms, conditions and restrictions relating thereto.

Section 2. Ascertainment of Property Value.

The Chief Procurement Officer shall ascertain the value of the property in issue by exercising the accepted practices, procedures and customs of the real estate appraisal profession of the affected locality.

Section 3. Requests for Proposals.

In the event the Authority issues a request for proposals in connection with its acquisition of any real property consisting of 2,500 square feet or more, it shall submit a notice of the contract opportunity for publication in the Central Register 30 days prior to the deadline for acceptance of proposals, in accordance with 950 CMR 21.00.

Section 4. Certifications.

The procurement officer shall require that every contract for the provision of real property to the Authority, or the contractor's bid or proposal therefor, contain the following written certifications:

(a) The certifications required by Chapter I, Part B, Section 2 of this Policy;

(b) The certifications required by paragraphs (b)(2) and (c) of Chapter II, Part A, Section 9 of this Policy; and

(c) The disclosure statement giving the true names and addresses of persons having a direct or indirect beneficial interest in the property, in accordance with Mass. G.L. c. 7, § 40J, which shall be filed with the Commissioner of Capital Asset Management and Maintenance.

CHAPTER III: DISPOSALS

PART A. GENERAL PROVISIONS.

Section 1. Applicability.

(a) Every contract for the disposal of tangible supplies or real property shall be awarded in accordance with the procedures set forth in this Chapter III and any procedures issued by the Chief Procurement Officer supplementing the provisions of this Policy.

(b) Notwithstanding the provisions of paragraph (a) above, the provisions of this Chapter III shall not apply to the following contracts, which shall continue to be awarded by the Members through the exercise of sound business practices, by majority votes at duly constituted public meetings:

(1) contracts, leases and licenses by the Authority of its boat slips, berths and moorings; and

(2) contracts, leases and licenses by the Authority pertaining to its terminal areas for use as bus stands or waiting areas.

Section 2. Certifications.

Unless otherwise authorized by the Members by majority vote at a duly constituted public meeting or impractical due to the use of an online auction to dispose of a tangible supply:

(a) Before the award of any contract for the disposal of a tangible supply or real property with a fair market value of more than $5,000, the procurement officer shall require that the proposed contractor disclose in writing the names and addresses of all persons interested in the proposed contract, including all partners of the proposed contractor if the proposed contractor is a partnership and all officers, directors and all persons with an ownership interest of more than five percent if the proposed contractor is a corporation.

(b) The procurement officer shall require that every person submitting a bid, proposal, or response in connection with the disposal or a tangible supply or real property of the Authority shall certify in writing on the bid, proposal, or response under penalties of perjury that the bid, proposal, or response has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

(c) The procurement officer also shall require that every contract for the disposal of a tangible supply or real property, or the contractor's bid, proposal, or response therefor, contain the written certification required by Chapter I, Part B, Section 2 and paragraphs (b)(2) and (c) of Chapter II, Part A, Section 9.

PART B. TANGIBLE SUPPLIES.

Section 1. Applicability.

The Chief Procurement Officer, with the approval of the General Manager, shall dispose of a tangible supply no longer useful to the Authority but having resale or salvage value, in accordance with this Policy and any procedures issued by the Chief Procurement Officer supplementing the provisions of this Policy.

Section 2. Methods of Disposal.

The Chief Procurement Officer shall offer such supply through competitive sealed bids, public auction (including on-line auctions such as eBay and govdeals.com) or established markets, at the discretion of the Chief Procurement Officer, or as the Members may from time to time direct.

Section 3. Notice of Sale.

Notice of sale by bid or auction shall conform with the procedures set forth in Section 3 of Part A of Chapter II of this Policy. The notice shall indicate:

(a) the supply offered for sale;

(b) the location and method for inspection of such property;

(c) the terms and conditions of sale, including the place, date and time for the bid opening or auction; and

(d) that the Authority retains the right to reject any and all bids.

Section 4. Sale after Rejection of Bids.

If the Chief Procurement Officer rejects the bid of the highest responsive bidder, the Chief Procurement Officer may:

(a) negotiate a sale of such supply so long as the negotiated sale price is higher than the bid price; or

(b) resolicit bids.

Section 5. Trade-ins.

The Chief Procurement Officer may dispose of a supply by trading it in for another supply, or for a credit towards the purchase of another supply, if the invitation for bids, request for proposals, or request for responses so indicated.

Section 6. Supplies of Less than $5,000 in Value.

The General Manager may from time to time approve alternative procedures to be followed by a procurement officer in connection with the disposal of any supply with an estimated net value of less than $5,000.

Section 7. Disposal for Less than Fair Market Value.

Notwithstanding any other requirement of this Policy, the Members, by majority vote at a duly constituted public meeting, unless otherwise prohibited by law, may dispose of a tangible supply no longer useful to the Authority but having resale or salvage value, at less than its fair market value to a governmental entity described in paragraph (b)(i) of Section 1 of Part A of Chapter II of this Policy or a charitable organization which has received a tax exemption from the United States by reason of its charitable nature.

PART C. REAL PROPERTY.

Section 1. Determination to Dispose of Real Property.

In the event the Authority decides to dispose of real property, the Members shall formally determine, by a majority vote, to so act and shall specify the terms, conditions and restrictions relating thereto.

Section 2. Ascertainment of Property Value.

The Chief Procurement Officer shall ascertain the value of the property in issue by exercising the accepted practices, procedures and customs of the real estate appraisal profession of the affected locality.

Section 3. Requests for Proposals.

In the event the Authority issues a request for proposals in connection with its disposition of any real property consisting of 2,500 square feet or more, it shall submit a notice of the contract opportunity for publication in the Central Register 30 days prior to the deadline for acceptance of proposals, in accordance with 950 CMR 21.00.

Section 4. Certifications.

In addition to the certifications required by Part A, Section 2 of this Chapter, the procurement officer shall require that every contract for the disposition of real property, or the contractor's bid or proposal therefor, contain the disclosure statement giving the true names and addresses of persons having a direct or indirect beneficial interest in the property, in accordance with Mass. G.L. c. 7, § 40J, which shall be filed with the Commissioner of Capital Asset Management and Maintenance.